IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17444 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNABEN AMRUTLAL SOLANKI - Petitioner(s)
Versus
SANJAYKUMAR CHHAGANLAL RATHOD - Respondent(s)

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Appearance :
MR ASHOK K PADIA for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,
MR JK PARMAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 07/07/2006

ORAL JUDGMENT

1. By filing instant petition under Article 227 of the Constitution of India, petitioner / original opponent – wife seeks to challenge the order

dated 24.3.2005 recorded below application exh.8 in H.M.P No. 109 of 2004 by the learned Civil Judge (SD), Gandhinagar, by which application filed by the petitioner under Section 24 of the Hindu Marriage Act, 1955 (“the Act” for short) to receive interim maintenance, i.e. Pendente lite and expenses of the proceedings, has been rejected.

2. The petitioner is a legally wedded wife of the respondent. She was driven out by the respondent from her matrimonial house. The respondent, thereafter, filed H.M.P. No. 109 of 2004 in the Court of learned Civil Judge (SD), Gandhinagar against the petitioner for the decree of divorce under Section 13 of the Act. The petitioner also appeared and filed application exh.8 under Section 24 of the Act to get the maintenance pendente lite and expenses.

3. The respondent husband filed reply and controverted the averments made in the application. The petitioner filed Rejoinder Affidavit.

4. The learned Judge, after considering the submissions advanced at the bar, and the pleadings of the parties, rejected the application on the ground that the petitioner is serving, which is reflected from the FIR produced at mark 3/3 and therefore, she is not entitled to get the interim alimony, and accordingly rejected the application, which has given rise to the present petition.

5. This Court has considered the submissions advanced by Mr. A.K.Padia, learned advocate of the petitioner and Mr. J.K.Parmar, learned advocate of the respondent and perused the impugned order and also the averments made in this petition.

6. So far as the marriage between the parties is concerned, there is no dispute. There is also no dispute to the fact that the petitioner at present is residing at her parents' house. The respondent has filed H.M.P No. 109 of 2004 to get the decree of divorce under Section 13 of the Act. In the said proceedings, the petitioner has filed application exh. 8 under Section 24 of the Act to receive maintenance pendente lite and expenses of the proceedings.

7. On a perusal of the order, it is seen that cryptic and unreasoned order is passed, which can never sustain in the eye of law. The learned Judge has assigned the reason that on the basis of the FIR produced at mark 3/3 wife is serving as a Computer Operator. The learned Judge has not examined what is the income of the respondent as well as the petitioner.

8. In aforesaid view of the matter, the order impugned deserves to be quashed and set aside by allowing this petition and by remanding the matter for deciding afresh in light of the pleadings and the documents annexed with the application as well as reply.

9. For the foregoing reasons, the petition succeeds

and accordingly it is allowed with no order as to costs. Impugned order dated 24.3.2005 rendered in application exh.8 in H.M.P. No. 109 of 2004 dismissing the application is hereby quashed and set aside. The matter is remanded to the learned Civil Judge (SD), Gandhinagar for deciding application exh.8 afresh after giving ample opportunity to both the parties and considering the pleadings and the documents annexed with the petition.

10. Rule is made absolute. Interim relief staying the further proceedings of H.M.P. 109 of 2004 is hereby vacated.

(A.M.Kapadia,J)

Jayanti*